

1 A bill to be entitled

2 An act relating to nursing home and assisted living
3 facility resident rights; amending s. 400.102, F.S.;
4 providing additional grounds for action by the Agency
5 for Health Care Administration against a licensee;
6 amending s. 400.141, F.S.; requiring a nursing home
7 facility to provide current and updated contact
8 information to the resident and the State Long-Term
9 Care Ombudsman Program; amending s. 400.145, F.S.;
10 requiring nursing home facilities to provide access to
11 or copies of certain resident records under certain
12 conditions and within a specified timeframe; providing
13 an exception for psychiatric records under certain
14 circumstances; amending s. 429.28, F.S.; providing
15 notice requirements regarding relocation or
16 termination of residency from an assisted living
17 facility; reenacting s. 400.121(1) and (2), F.S.,
18 relating to imposition of administrative fines by the
19 agency to incorporate the amendment made to s.
20 400.102, F.S.; providing an effective date.

21
22 Be It Enacted by the Legislature of the State of Florida:

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24 Section 1. Subsection (5) is added to section 400.102,
25 Florida Statutes, to read:

26 400.102 Action by agency against licensee; grounds.—In
 27 addition to the grounds listed in part II of chapter 408, any of
 28 the following conditions shall be grounds for action by the
 29 agency against a licensee:

30 (5) Failure to provide residents and the State Long-Term
 31 Care Ombudsman Program with a facility's current contact
 32 information, including a functional telephone number, and notify
 33 residents and the State Long-Term Care Ombudsman Program of any
 34 change in contact information within 30 days after a change in
 35 such information.

36 Section 2. Paragraph (v) is added to subsection (1) of
 37 section 400.141, Florida Statutes, to read:

38 400.141 Administration and management of nursing home
 39 facilities.—

40 (1) Every licensed facility shall comply with all
 41 applicable standards and rules of the agency and shall:

42 (v) Provide residents and the State Long-Term Care
 43 Ombudsman Program with a facility's current contact information,
 44 including a functional telephone number, and notify residents
 45 and the State Long-Term Care Ombudsman Program of any change in
 46 contact information within 30 days after a change in such
 47 information.

48 Section 3. Subsections (1) and (5) of section 400.145,
 49 Florida Statutes, are amended to read:

50 400.145 Copies of records of care and treatment of

51 resident.—

52 (1) A resident has the right to access personal and
53 medical records pertaining to him or herself. Upon receipt of a
54 written or oral request that complies with the federal Health
55 Insurance Portability and Accountability Act of 1996 (HIPAA) and
56 this section, a nursing home facility shall furnish to a
57 competent resident, or to a representative of that resident who
58 is authorized to make requests for the resident's records under
59 HIPAA or subsection (2), copies of the resident's paper and
60 electronic records that are in possession of the facility. Such
61 records must include any personal records, medical records, and
62 records concerning the care and treatment of the resident
63 ~~performed by the facility,~~ except for progress notes and
64 consultation report sections of a psychiatric nature. The
65 facility shall provide access to the requested records within 24
66 hours, excluding weekends and holidays, ~~14 working days~~ after
67 receipt of a request relating to a current resident ~~or within 30~~
68 ~~working days after receipt of a request relating to a former~~
69 ~~resident.~~ The facility shall provide the resident or the
70 authorized representative of that resident with a copy of the
71 requested records or any portion thereof within 2 working days
72 after receipt of a request relating to a current resident or
73 within 30 working days after receipt of a request relating to a
74 former resident.

75 (5) If a licensed medical provider ~~nursing home facility~~

76 | determines that disclosure of psychiatric ~~the~~ records to the
 77 | resident would reasonably be likely to endanger the life or
 78 | physical safety of the resident or another person ~~be detrimental~~
 79 | ~~to the physical or mental health of the resident,~~ the facility
 80 | may refuse to furnish the record directly to the resident;
 81 | however, upon such refusal, the resident's records shall, upon
 82 | written request by the resident, be furnished to any other
 83 | licensed medical provider designated by the resident.

84 | Section 4. Paragraph (k) of subsection (1) of section
 85 | 429.28, Florida Statutes, is amended to read:

86 | 429.28 Resident bill of rights.-

87 | (1) No resident of a facility shall be deprived of any
 88 | civil or legal rights, benefits, or privileges guaranteed by
 89 | law, the Constitution of the State of Florida, or the
 90 | Constitution of the United States as a resident of a facility.
 91 | Every resident of a facility shall have the right to:

92 | (k) At least 45 days' written notice of relocation or
 93 | termination of residency from the facility unless, for medical
 94 | reasons, the resident is certified by a physician to require an
 95 | emergency relocation to a facility providing a more skilled
 96 | level of care or the resident engages in a pattern of conduct
 97 | that is harmful or offensive to other residents. In the case of
 98 | a resident who has been adjudicated mentally incapacitated, the
 99 | guardian shall be given at least 45 days' written notice of a
 100 | nonemergency relocation or residency termination. Reasons for

101 relocation shall be set forth in writing and provided to the
 102 resident or the resident's legal representative. In order for a
 103 facility to terminate the residency of an individual without
 104 notice as provided herein, the facility shall show good cause in
 105 a court of competent jurisdiction.

106 Section 5. For the purpose of incorporating the amendment
 107 made by this act to section 400.102, Florida Statutes, in a
 108 reference thereto, subsections (1) and (2) of section 400.121,
 109 Florida Statutes, are reenacted to read:

110 400.121 Denial, suspension, revocation of license;
 111 administrative fines; procedure; order to increase staffing.—

112 (1) The agency may deny an application, revoke or suspend
 113 a license, and impose an administrative fine, not to exceed \$500
 114 per violation per day for the violation of any provision of this
 115 part, part II of chapter 408, or applicable rules, against any
 116 applicant or licensee for the following violations by the
 117 applicant, licensee, or other controlling interest:

118 (a) A violation of any provision of this part, part II of
 119 chapter 408, or applicable rules; or

120 (b) An adverse action by a regulatory agency against any
 121 other licensed facility that has a common controlling interest
 122 with the licensee or applicant against whom the action under
 123 this section is being brought. If the adverse action involves
 124 solely the management company, the applicant or licensee shall
 125 be given 30 days to remedy before final action is taken. If the

126 | adverse action is based solely upon actions by a controlling
127 | interest, the applicant or licensee may present factors in
128 | mitigation of any proposed penalty based upon a showing that
129 | such penalty is inappropriate under the circumstances.

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131 | All hearings shall be held within the county in which the
132 | licensee or applicant operates or applies for a license to
133 | operate a facility as defined herein.

134 | (2) Except as provided in s. 400.23(8), a \$500 fine shall
135 | be imposed for each violation. Each day a violation of this part
136 | or part II of chapter 408 occurs constitutes a separate
137 | violation and is subject to a separate fine, but in no event may
138 | any fine aggregate more than \$5,000. A fine may be levied
139 | pursuant to this section in lieu of and notwithstanding the
140 | provisions of s. 400.23. Fines paid shall be deposited in the
141 | Health Care Trust Fund and expended as provided in s. 400.063.

142 | Section 6. This act shall take effect July 1, 2018.